

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2695

**Introduced by Assembly Member Hernandez
(Coauthor: Assembly Member Silva)**

February 19, 2010

An act to add Chapter 27 (commencing with Section 79401) to Part 2 of Division 22 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2695, as amended, Hernandez. California Nursery Producers Commission.

(1) Existing law establishes various commissions to promote agricultural products from the state.

This bill would create the California Nursery Producers Commission in state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission. The commission would be authorized to carry out programs of outreach, education, promotion, marketing, and research relating to nursery products. The bill would authorize the commission to levy an annual assessment, *not to exceed a specified amount*, on producers of nursery products, and would authorize the expenditure of those funds for purposes of implementing and administering the bill's provisions, thereby making an appropriation.

The bill, except as necessary to conduct an election, would not become operative until eligible producers, by referendum, vote in favor of the bill's provisions, as prescribed. The bill would ~~provide that it is a civil violation for any person to~~ *authorize the commission to levy a civil*

penalty not exceeding \$1,000 on a person who willfully ~~render~~ renders or ~~furnish~~ furnishes false reports or records, ~~fail~~ fails to render or furnish a report or record, and ~~secrete, destroy, or alter~~ or secretes, destroys, or alters records, as specified. The bill would authorize the commission to bring civil actions and other remedies to enforce the bill's provisions and regulations adopted pursuant to these provisions. The bill would also provide for the continuation and suspension of the operation of its provisions and for concluding the operations of the commission.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 27 (commencing with Section 79401)
2 is added to Part 2 of Division 22 of the Food and Agricultural
3 Code, to read:

4
5 CHAPTER 27. CALIFORNIA NURSERY PRODUCERS COMMISSION

6
7 Article 1. Declaration and General Provisions

8
9 79401. The production of nursery products constitutes an
10 important industry of this state that provides substantial and
11 necessary revenues for the state, products that are a foundation for
12 its residents' food supply and employment for its residents.

13 79402. The maintenance of the nursery industry of California
14 is necessary to assure the public and the state's and nation's crop
15 agriculture industry of a continuous supply of vital nursery products
16 and the maintenance of needed levels of income for those engaged
17 in the nursery industry and in its supplier, distribution, and related
18 service chain.

19 79403. The production of nursery products in California is
20 currently the state's number two agricultural crop with 2008 farm
21 gate sales of four billion dollars (\$4,000,000,000) and has the

1 potential to become the leading segment of the state's agricultural
2 industry. To realize this potential, there is a need to engage in
3 research beneficial to the industry, to educate the public relative
4 to nursery products, and to promote and market nursery products.
5 The activities made possible by the establishment of the
6 commission will meet these needs and further the interests of the
7 industry and the state.

8 79404. The nursery industry has been negatively impacted by
9 invasive pests and diseases that also adversely affect the state's
10 environment, urban quality, and agricultural production. The
11 activities authorized by this commission will improve the quality
12 of nursery products and limit these negative impacts.

13 79405. The establishment of the commission is necessary for
14 the efficient development and management of a research, public
15 education, and marketing program that will enhance the reputation
16 of the California nursery industry, create a more receptive
17 environment for the industry and its products, aid its growth at
18 both wholesale and retail, and increase competitiveness of the
19 California nursery industry within the national and international
20 marketplace. In addition, the commission is necessary to carry out
21 the California nursery industry's commitment to responsible
22 stewardship, environmental protection, and increasingly efficient
23 cultural practices.

24 79406. (a) The legislature finds and declares that the
25 commission is intended to operate in conjunction with other
26 nursery-related laws and programs in the state, including, but not
27 limited to, the licensing laws and regulations applicable to nurseries
28 (Chapter 1 (commencing with Section 6701) of Part 3 of Division
29 4), the inspection and cleanliness laws applicable to nurseries
30 (Article 1 (commencing with Section 6901) of Chapter 2 of Part
31 3 of Division 4), the shipment and pest certification laws applicable
32 to nurseries (Article 2 (commencing with Section 6921) and Article
33 4 (commencing with Section 6961) of Chapter 2 of Part 3 of
34 Division 4), the grades and standards laws and regulations
35 applicable to nurseries (Chapter 5 (commencing with Section
36 53301) of Division 18), and specific nursery stock programs such
37 as the California Grape Rootstock Improvement Commission
38 (Chapter 12.6 (commencing with Section 74701)).

39 (b) The legislature finds and declares that the commission
40 enhances the existing comprehensive statutory and regulatory

1 structure affecting all aspects of nursery products production in
2 California.

3 (c) The commission shall periodically meet and confer with all
4 other nursery-related programs administered by the department to
5 ensure coordination of policies and programs.

6 79407. The Legislature further finds and declares that the
7 programs specified in Section 79406, including this commission,
8 greatly benefit the nursery industry, and as such, advance the
9 interests of the State of California by providing substantial
10 employment for the state's citizens, producing needed tax and fee
11 revenues for the support of state and local government, encouraging
12 responsible stewardship of valuable agricultural resources and the
13 environment, and producing substantial quantities of nursery
14 products for the state, nation, and world.

15 79408. The successes that the nursery industry of California
16 has achieved have resulted from a commitment to industry-funded
17 research that has led to significant improvements in the quality
18 and quantity of the nursery products available to consumers and
19 increasingly more efficient and environmentally protective cultural
20 practices. The establishment of the commission will continue and
21 enhance this research effort and move the nursery industry toward
22 its potential, resulting in increased consumer value and enhanced
23 grower returns.

24 79409. The production of nursery products in this state is
25 hereby declared to be affected with a public interest. This chapter
26 is enacted in the exercise of the police power of this state for the
27 purposes of protecting the health, peace, safety, and general welfare
28 of the people of this state.

29 79410. Opportunity exists for continued growth and expansion
30 of the nursery industry by creating new markets. The success of
31 such an expansion program is uniquely dependent upon effective
32 research and public education, since the creation of new markets
33 is essentially a matter of educating and informing people of the
34 use, value, and availability of nursery products and enhancing the
35 reputation of the California nursery products industry. The
36 expansion of the nursery industry also provides an important and
37 expanding source of jobs for many people in this state, including
38 many residing in historically depressed areas of the state, and it
39 serves to ensure the preservation of an agrarian society. The
40 expansion also provides pathways for the unemployed, the poor,

1 unskilled laborers, rehabilitated inmates, and other disadvantaged
2 groups to learn valuable professional nursery skills and obtain
3 seasonal or permanent employment with career potential.

4 79411. The commission's activities are necessary for the
5 efficient development of a national and international program and
6 exists as an integral part of a broader framework of state and federal
7 statutes and regulations designed to: collectively enhance the
8 quality and reputation of California nursery products; create a more
9 receptive environment for nursery products; improve the capability
10 of nursery products producers to function within the overall
11 regulatory environment; increase the competitiveness of the nursery
12 products industry within the national and international market
13 place; implement the industry's commitment to responsible
14 stewardship of agricultural land and the environment and
15 increasingly efficient cultural practices; and further the goals and
16 interests of the state by preserving the economic well-being of the
17 agricultural economy.

18 79412. The commission form of administration created by this
19 chapter is uniquely situated to provide those engaged in the
20 production of nursery products the opportunity to avail themselves
21 of the benefits of collective action in the broad fields of research,
22 education, and the development, maintenance, and expansion of
23 markets.

24 79413. No action taken by the commission, or by any individual
25 in accordance with this chapter or with the regulations adopted
26 under this chapter, is a violation of the Cartwright Act (Chapter 2
27 (commencing with Section 16700) of Part 2 of Division 7 of the
28 Business and Professions Code), the Unfair Practices Act (Chapter
29 4 (commencing with Section 17000) of Part 2 of Division 7 of the
30 Business and Professions Code), or any statutory or common law
31 against monopolies or combinations in restraint of trade. The
32 Legislature intends this program to be among those contemplated
33 by the United States Congress in the enactment of Section 610(i)
34 of Title 7 of the United States Code.

35 79414. It is hereby declared as a matter of legislative
36 determination that commission members and alternates are intended
37 to represent and further the interest of a particular industry
38 concerned and that this representation and furtherance is intended
39 to serve a public interest. Accordingly, the Legislature finds that
40 with respect to persons who are *elected or* appointed to the

1 commission, the particular industry concerned is tantamount to
2 and constitutes the public generally within the meaning of Section
3 87103 of the Government Code.

4
5 Article 2. Definitions
6

7 79421. Unless the context otherwise requires, the definitions
8 in this article govern the construction of this chapter.

9 79422. “Books and records” means books, records, contracts,
10 documents, memoranda, papers, correspondence, or other written
11 data pertaining to matters relating to the activities subject to this
12 chapter.

13 79423. “Commission” means the California Nursery Producers
14 Commission.

15 79424. “Department” means the Department of Food and
16 Agriculture.

17 79425. “Ex officio member” means a nonvoting member of
18 the commission.

19 79426. “Market” or “marketing” means to sell nursery products
20 to a person other than another producer.

21 79427. “Marketing season” or “fiscal year” are synonymous
22 terms and mean the period beginning January 1 of any year and
23 extending through the last day of the year.

24 79428. “Person” means any individual, partnership, corporation,
25 limited liability company or partnership, firm, company, or other
26 entity doing business in California.

27 79429. (a) “Producer” means any person that operates under
28 a California state nursery license (producer category), and that
29 produces, or causes to be produced, nursery products for market.
30 “Producer” does not include a licensed producer nursery that
31 produced and sold nursery products for a gross dollar value of less
32 than five million dollars (\$5,000,000) in the preceding marketing
33 season.

34 (b) The dollar amount specified in subdivision (a) may be
35 increased by a two-thirds vote of the commission.

36 (c) The dollar amount specified in subdivision (a) may be
37 decreased only if approved by referendum pursuant to Article 5
38 (commencing with Section 79491). For purposes of a referendum
39 conducted pursuant to this subdivision, the term “producer,” as

1 defined in subdivision (a), includes persons that would become
2 subject to this chapter if the referendum is approved.

3 79430. "Nursery products" means any plant or plant part for
4 planting or propagation.

5 79431. "Research" means any research relating to invasive
6 pests, the production, harvest, postharvest handling, or marketing
7 of nursery products, nursery product components, or practices
8 employed by nurseries, and research relating to public education
9 regarding nurseries and nursery products, including, but not limited
10 to, basic and applied research.

11 79432. "Secretary" means the Secretary of Food and
12 Agriculture.

13 79433. "Sell" or "sold" means to transfer or cause the transfer
14 of title to nursery products for valuable consideration.

15
16 Article 3. California Nursery Producers Commission
17

18 79441. (a) There is in the state government the California
19 Nursery Producers Commission. The commission shall be
20 composed of 14 producers nominated and elected by and from
21 producers, and one public member.

22 (b) The public member shall be appointed to the commission
23 by the secretary from nominees recommended by the commission.

24 (c) The secretary and other appropriate individuals, as
25 determined by the commission, shall be ex officio members of the
26 commission.

27 79442. (a) The secretary may require the commission to correct
28 or cease any existing activity or function that is determined by the
29 secretary not to be in the public interest or that is in violation of
30 this chapter.

31 (b) If the commission refuses or fails to cease those activities
32 or functions or to make the corrections as required by the secretary,
33 the secretary may, upon written notice, suspend all or a portion of
34 the activities or functions of the commission until the time that the
35 cessation or correction of activities or functions as required by the
36 secretary has been accomplished by the commission.

37 (c) Actions of the commission in violation of the written notice
38 are without legal force or effect. The secretary, to the extent
39 feasible, shall issue the written notice prior to the commission
40 entering into any contractual relationship affecting the existing or

1 proposed activities or functions that are the subject of the written
2 notice.

3 (d) Upon service of the written notice, the secretary shall notify
4 the commission in writing of the specific acts that the secretary
5 determines are not in the public interest or are in violation of this
6 chapter, his or her reasons for requiring a cessation or correction
7 of specific existing or proposed activities or functions, and
8 recommendations that will make the activities or functions
9 acceptable.

10 79443. When the secretary is required to concur in a decision
11 of the commission, the secretary shall give his or her response to
12 the commission within 15 working days from notification of the
13 decision. The secretary shall set forth in writing with specificity
14 the reasons for any refusal to concur. The secretary's response
15 may be a requirement that additional information be provided.

16 79444. The commission shall reimburse the secretary for all
17 expenditures incurred by the secretary in carrying out his or her
18 duties and responsibilities pursuant to this chapter. However, a
19 court may, if it finds that the secretary acted arbitrarily or
20 capriciously in restricting the activities or functions of the
21 commission, relieve the commission of the responsibility for
22 payment of the secretary's legal costs with regard to that action.

23 79445. Except for ex officio members, an alternate for each
24 member shall be nominated and elected, and for the public member
25 appointed, in the same manner as the member. An alternate shall,
26 in the absence of the member for whom he or she is an alternate,
27 serve in place of the member and shall have, and be able to
28 exercise, all the rights, privileges, and powers of the member when
29 serving on the commission. In the event of a change in status
30 making a member ineligible to serve, or due to death, removal,
31 resignation, or disqualification of a member, the alternate shall act
32 as a member of the commission for the unexpired portion of the
33 term.

34 79446. Except as provided in Section 79441, any vacancy on
35 the commission occurring by the failure of any person elected to
36 or serving on the commission as a member or alternate to continue
37 in his or her position due to a change in status making him or her
38 ineligible to serve, or due to death, removal, or resignation, shall
39 be filled by another eligible person for the unexpired portion of
40 the term by a majority vote of the remaining members of the

1 commission. The person shall fulfill all the qualifications set forth
2 in this article as required for the person whose office he or she is
3 to occupy.

4 79447. Any vacancy on the commission occurring by the failure
5 of the public member to continue in his or her position due to a
6 change in status making him or her ineligible to serve, or due to
7 death, removal, resignation, or disqualification, may be filled upon
8 appointment by the secretary, from nominees recommended by
9 the commission, of another eligible person for the unexpired
10 portion of the term. The person shall fulfill all the qualifications
11 set forth in this article as required for the member whose office he
12 or she is to occupy.

13 79448. Any producer member and his or her alternate on the
14 commission shall be an individual producer or an employee or
15 representative of a producer that has a financial interest in
16 producing nursery products or causing nursery products to be
17 produced. The qualifications of producer members and their
18 alternates shall be maintained during their entire term of office.
19 The absence of any producer member from two consecutive
20 meetings or lapse in qualifications shall be grounds for the
21 commission to declare the seat vacant.

22 79449. The public member and his or her alternate shall not
23 have any financial interest in the nursery industry. The public
24 member and his or her alternate shall have all the powers, rights,
25 and privileges of any other member or alternate, respectively, on
26 the commission, except that the public member and his or her
27 alternate member shall not have a vote on issues regarding the
28 assessments established pursuant to Article 6 (commencing with
29 Section 79501).

30 79450. Commission members and alternates shall serve
31 three-year terms and until their successors are elected, and
32 qualified, except, that of the first members of the commission,
33 one-third shall serve one year, one-third shall serve two years, and
34 one-third shall serve three years. The determination of the term of
35 each member shall be made by lot. The public member and his or
36 her alternate shall serve three-year terms and until their successors
37 are appointed and qualified.

38 79451. The commission may sue and be sued regarding any
39 matter related to the purposes of this chapter, contract and be

1 contracted with, and has and possesses all of the powers of a
2 corporation. It may adopt a corporate seal.

3 79452. A majority of the members of the commission shall
4 constitute a quorum of the commission for the transaction of
5 business. The vote of a majority of the members present at a
6 meeting at which there is a quorum constitutes the act of the
7 commission. The commission may continue to transact business
8 at a meeting at which a quorum is initially present, notwithstanding
9 the withdrawal of members, provided any action is approved by
10 the requisite majority of the required quorum.

11 79453. The secretary or his or her representatives shall be
12 notified and may attend each meeting of the commission and any
13 committee meetings of the commission. However, the secretary
14 or his or her representative is not entitled to attend an executive
15 session of the commission or a committee of the commission called
16 for the purpose of discussing potential or actual litigation against
17 the department.

18 79454. No member or alternate of the commission or member
19 of a committee established by the commission who is a nonmember
20 of the commission shall receive a salary. Each member of the
21 commission and each alternate serving in place of a member, except
22 ex officio members who are officers or employees of a public
23 agency, and each member of a committee established by the
24 commission who is a nonmember of the commission, may receive
25 reasonable and necessary traveling expenses and meal allowances
26 as approved by the commission for each day spent in actual
27 attendance at, or in traveling to and from, meetings of the
28 commission or committees of the commission, or on special
29 assignment for the commission.

30 79455. All funds received by any person from the assessments
31 levied under this chapter or otherwise received by the commission
32 shall be deposited in banks that the commission may designate
33 and shall be disbursed by order of the commission through an agent
34 or agents as it may designate for that purpose. The agent or agents
35 shall be bonded by a fidelity bond, executed by a surety company
36 authorized to transact business in this state, in favor of the
37 commission, in an amount of not less than twenty-five thousand
38 dollars (\$25,000).

39 79456. The state is not liable for the acts of the commission
40 or its contracts. Payments of all claims arising by reason of the

1 administration of this chapter or acts of the commission are limited
2 to the funds collected by the commission. No member or alternate
3 of the commission, or any employee or agent thereof, is personally
4 liable for the contracts or other liabilities of the commission. No
5 member or alternate of the commission, or any employee or agent
6 thereof, is responsible individually in any way to any other person
7 for errors in judgment, mistakes, or other acts, either of commission
8 or omission, as principal, agent, or employee, except for his or her
9 own individual acts of dishonesty or crime. No member or alternate
10 of the commission, or any employee or agent thereof, is responsible
11 individually for any act or omission of any other member or
12 alternate of the commission, or any employee or agent thereof. No
13 member or alternate of the commission, or any employee or agent
14 thereof, is liable for the default of any other member or alternate
15 of the commission, or any employee or agent thereof.

16
17 Article 4. Powers and Duties
18

19 79461. The powers and duties of the commission shall include,
20 but are not limited to, all of those contained in this article.

21 79462. The commission may adopt and from time to time alter,
22 rescind, modify, and amend all proper and necessary bylaws, rules,
23 regulations, and orders in accordance with commission procedures
24 for purposes of carrying out this chapter, including rules for appeals
25 from any bylaw, rule, regulation, operating procedure, or order of
26 the commission.

27 79463. The commission may administer and enforce this
28 chapter and do and perform all acts and exercise all powers
29 incidental to, or in connection with, or deemed reasonably
30 necessary to, promote, maintain, and enhance the nursery industry.

31 79464. The commission may appoint its own officers, including
32 a chairperson, one or more vice chairpersons, and other officers
33 as it deems necessary. The officers have the powers and duties
34 delegated to them by the commission.

35 79465. (a) The commission may employ a person to serve at
36 the pleasure of the commission as president of the commission,
37 and other personnel, including legal counsel of its choice, necessary
38 to carry out this chapter. If any person employed by the commission
39 engages in any conduct that the secretary determines is not in the
40 public interest or that is in violation of this chapter, the secretary

1 shall notify the commission of the conduct and request that
2 corrective and, if appropriate, disciplinary action, be taken by the
3 commission. If the commission fails or refuses to correct the
4 situation or to take disciplinary action satisfactory to the secretary,
5 the secretary may suspend or discharge the person.

6 (b) The commission may retain a management firm or the staff
7 from any board, commission, or committee of the state or federal
8 government to perform the functions prescribed by this section
9 under the direction of the commission.

10 (c) If requested by an advisory board, board of directors, or any
11 authorized agent, the commission may administer any
12 governmental program related to the nursery products industry.

13 79466. The commission may fix the compensation for all
14 employees of the commission.

15 79467. The commission may appoint committees composed
16 of both members and nonmembers of the commission to advise
17 the commission in carrying out this chapter.

18 79468. The commission may establish offices and incur
19 expenses, enter into any and all contracts and agreements, create
20 liabilities, develop, own, and control the use of any intellectual
21 property, and borrow funds in advance of receipt of assessments
22 as may be necessary in the opinion of the commission for the
23 proper administration and enforcement of this chapter and the
24 performance of its duties.

25 79469. The commission shall keep accurate books, records,
26 and accounts of all of its dealings, which shall be subject to an
27 annual audit by an auditing firm selected by the commission with
28 the concurrence of the secretary. A summary of the audit shall be
29 reported to all persons subject to this chapter, a copy of which
30 shall also be submitted to the department. In addition, the secretary,
31 as he or she determines necessary, may conduct or cause to be
32 conducted a fiscal and compliance audit of the commission.

33 79470. The commission may present facts to, and negotiate
34 with, local, state, federal, and foreign agencies and governments
35 on matters that affect the California nursery industry, including,
36 but not limited to, the maintenance and expansion of present
37 markets, the creation of new and larger markets for nursery
38 products, invasive pest issues, plant health, interstate and foreign
39 export requirements, registration of pesticides, actions applicable
40 to the state environmental laws and regulations, and actions

1 applicable to the federal Plant Protection Act, Environmental
2 Quality Improvement Act, Clean Air Act, other governmental
3 regulatory or statutory actions, and international trade agreements.

4 79471. The commission may conduct outreach, advertise, and
5 educate and instruct the public and the retail and wholesale trade
6 with respect to the quality, features, uses, and value of nursery
7 products and the practices and methods of production used by
8 nurseries.

9 79472. The commission may conduct outreach and educate
10 and instruct the wholesale and retail trade, including, but not
11 limited to, their physical and electronic channels of distribution to
12 markets with respect to proper methods of handling and selling
13 nursery products, and conduct consumer, trade, and trading partner
14 surveys and analyses.

15 79473. The commission may conduct, and contract with others
16 to conduct, research, including the study, analysis, dissemination,
17 and accumulation of information obtained directly or from research
18 or elsewhere, with respect to cultural, production and postharvest
19 practices, and the sourcing, marketing and distribution of nursery
20 products. The results of any research conducted by or on behalf
21 of the commission may be used by the commission in any way it
22 deems appropriate.

23 79474. The commission may contract to receive and render
24 services in formulating and conducting plans and programs and
25 enter into any other contracts or agreements that the commission
26 deems necessary to carry out this chapter.

27 79475. The commission may accept contributions of, or match
28 private, state, or federal funds, and employ or make contributions
29 of funds to other persons or local, state, or federal agencies for
30 purposes of promoting, enhancing, and maintaining the nursery
31 industry.

32 79476. In its discretion, the commission may cooperate with
33 or provide funding to other private or governmental entities in the
34 resolution of emergencies arising in the industry and impacting
35 the health and safety of the public or to maintain the continued
36 stability and reputation of the nursery industry.

37 79477. The commission may collect information, including,
38 but not limited to, industry crop statistics, identity and size of
39 markets, and trading partners, and publish and distribute without

1 charge, a bulletin or other communication to producers of nursery
2 products.

3 79478. The commission shall establish an assessment rate to
4 be paid by producers to defray operating costs of the commission.

5 79479. The commission shall establish an annual budget
6 according to generally accepted accounting practices. The budget
7 shall be concurred in by the secretary prior to disbursement of
8 funds, except for disbursements made pursuant to Section 79466.

9 79480. The commission shall submit to the secretary for his
10 or her concurrence an annual statement of contemplated activities
11 authorized pursuant to this chapter.

12 79481. The commission may investigate and prosecute civil
13 violations of this chapter and file complaints with appropriate law
14 enforcement agencies or officers for suspected criminal violations
15 of this chapter.

16 79482. The commission may appoint any person to serve as
17 an ex officio member.

18 19 Article 5. Implementation and Voting Procedures 20

21 79491. (a) Within 60 days of a request from any producer, the
22 secretary shall establish a list of producers eligible to vote on
23 implementation of this chapter. The secretary may require
24 producers to submit the names and mailing addresses of other
25 producers. The secretary also may require that the information
26 provided include information on the value of nursery products
27 produced and sold by each producer or, in the alternative, may
28 establish procedures for receiving the information at the time of
29 the referendum vote specified in this article. The request for the
30 information shall be in writing and shall be filed within 10 days
31 following receipt of the request.

32 (b) Any producer eligible to vote whose name does not appear
33 on the appropriate list may have his or her name placed on the list
34 by filing with the secretary a signed statement, identifying himself
35 or herself as a person eligible to vote. Failure to be on the list does
36 not exempt the person from providing information requested by
37 the secretary or the commission or from paying assessments and
38 does not invalidate any industry votes conducted pursuant to this
39 article.

1 (c) Any producer eligible to vote may contact those on the list
2 regarding the referendum in a form and manner prescribed by the
3 secretary if all expenses associated with those contacts are paid in
4 advance.

5 79492. This chapter, except as necessary to conduct an
6 implementation referendum vote, shall not become operative until
7 the secretary finds, in a referendum vote conducted by the
8 secretary, that at least 40 percent of the total number of producers
9 from the list established by the secretary pursuant to this article
10 participate, and that either of the following occurs:

11 (a) Sixty-five percent of the producers who voted in the
12 referendum voted in favor of this chapter, and the producers so
13 voting marketed a majority of the total value of nursery products
14 marketed in the preceding marketing season by all of the producers
15 voting in the referendum.

16 (b) A majority of the producers who voted in the referendum
17 voted in favor of this chapter, and the producers so voting marketed
18 65 percent or more of the total value of nursery products marketed
19 in the preceding marketing season by all of the producers voting
20 in the referendum.

21 79493. The secretary shall establish a period in which to
22 conduct the referendum, which shall not be less than 10 days or
23 more than 60 days in duration, and may prescribe additional
24 procedures necessary to conduct the referendum. If the initial
25 period established is less than 60 days, the secretary may extend
26 the period. However, the total referendum period may not exceed
27 60 days.

28 79494. Nonreceipt of a ballot by an eligible producer shall not
29 invalidate a referendum.

30 79495. If the secretary finds that a favorable vote has been
31 given as provided in this article, the secretary shall certify and give
32 notice of the favorable vote to all affected producers whose names
33 and addresses are on file with the secretary.

34 79496. If the secretary finds that a favorable vote has not been
35 given as provided in this article, the secretary shall certify and
36 declare all provisions of this chapter inoperative. The secretary
37 may conduct other implementation referendum votes one year or
38 more after the previous vote has been taken.

39 79497. (a) Prior to the referendum vote conducted by the
40 secretary pursuant to this article, the proponents of the commission

1 shall deposit with the secretary the amount that the secretary deems
2 necessary to defray the expenses of preparing the necessary lists
3 and information and conducting the vote.

4 (b) Any funds not used in carrying out this article shall be
5 returned to the proponents of the commission who deposited the
6 funds with the secretary.

7 (c) Upon establishment of the commission, the commission may
8 reimburse the proponents of the commission for any funds
9 deposited with the secretary that were used in carrying out this
10 article, and for any legal expenses and costs incurred in establishing
11 the commission.

12 79498. Upon certification of the commission, the secretary
13 shall contact all producers by mail or call meetings of producers
14 for the purpose of nominating and electing persons to the
15 commission. All producers on the secretary's list shall be given
16 written notice of the meetings at least 10 days prior to the meeting
17 date.

18 79499. Subsequent to the first election of members and alternate
19 members of the commission pursuant to this chapter, persons to
20 be elected to the commission shall be selected pursuant to
21 nomination and election procedures established by the commission
22 with the concurrence of the secretary.

23 24 Article 6. Assessments and Records 25

26 79501. (a) The commission shall establish the assessment for
27 the following marketing season not later than January 1 of each
28 year, or as soon thereafter as possible. *The assessment shall not*
29 *be more than six-tenths of one cent (\$.0006) per dollar of sales.*

30 (b) An assessment greater than the amount established in
31 subdivision (a) may not be charged unless approved by a two-thirds
32 vote of the commission and by producers pursuant to the
33 procedures specified in Section 79492.

34 79502. This chapter does not apply to nursery products
35 produced only for a producer's home use unless the use shall
36 constitute a transfer of title between separate business entities held
37 by a single owner.

38 79503. Any person requesting an exemption from this chapter
39 shall file an affidavit with the commission attesting that he or she
40 is not a producer, as defined in Section 79429, or produces nursery

1 products only for his or her own home use without transfer of title
2 between entities as specified in Section 79502. The affidavit shall
3 contain all the information required by the commission. The
4 commission shall review the affidavit, conduct any additional
5 investigation it deems appropriate, and approve or deny the
6 affidavit.

7 79504. Every person who produces nursery products for market,
8 whether or not the nursery products are valued at more than the
9 gross dollar value established pursuant to Section 79429, shall
10 keep a complete and accurate record of the nursery products
11 produced and sold and aggregated data on its customers and trading
12 partners classified into statistical summary information in
13 categories prescribed by the commission, and shall submit the
14 records to the commission upon request in the time and manner
15 specified by the commission. The records shall be in simple form
16 and contain the information that the commission prescribes. The
17 records shall be preserved by the person producing nursery products
18 for a period of three years and shall be offered and submitted for
19 inspection at any reasonable time upon written demand of the
20 commission or its duly authorized agent.

21 79505. (a) All information obtained by the commission or the
22 secretary from producers and other persons required to keep and
23 submit records pursuant to this article shall be confidential and
24 shall not be disclosed except when required by a court order after
25 a hearing in a judicial proceeding involving this chapter.

26 (b) In addition, and notwithstanding any other provision of law,
27 all proprietary or trade secret information developed or gathered
28 pursuant to this chapter, including, but not limited to, the names
29 and addresses of persons subject to this chapter, individual
30 quantities produced or sold, prices paid, and the products of
31 research obtained by the commission, or by the department on
32 behalf of the commission, from any source is confidential, shall
33 not be considered a public record as that term is defined in Section
34 6252 of the Government Code, and shall not be disclosed by the
35 commission or the secretary except when required by a court order
36 after a hearing in a judicial proceeding involving this chapter.

37 (c) Information on volume shipments, crop value, and any other
38 related information that is required for reports to governmental
39 agencies, financial reports to the commission, or aggregate sales
40 and inventory information, and any other information that gives

1 only totals, but excludes individual information, may be disclosed
2 by the commission in its sole discretion.

3 79506. Any assessment that is levied as provided for in this
4 chapter is a personal debt of every person assessed.

5 79507. Every producer shall be a trustee of the assessments
6 owed to the commission until they are paid to the commission at
7 the time and in the manner prescribed by the commission. Title to
8 the assessments shall pass immediately to the commission upon
9 the sale of nursery products resulting in an assessment, and the
10 producer shall hold the assessments in trust for the benefit of the
11 commission and shall remit them, with assessment reports, in the
12 time and manner specified by the commission.

13 79508. When the producer is a corporation, ~~limited-liability~~
14 *limited liability* company, general, limited or limited liability
15 partnership, or trust, all of the directors and officers of the
16 corporation, all of the members and managers of the limited
17 liability company, all of the general and limited partners in the
18 partnership, and all of the trustees of the trust, in their capacity as
19 individuals shall be included, and any liability for violating this
20 chapter, including, but not limited to, failing to pay assessments
21 or file required reports, shall also include identical liability upon
22 each director and officer of the corporation, each member and
23 manager of the limited liability company, each general, limited
24 and limited liability partner in the partnership, and each trustee of
25 the trust.

26 79509. Any person who fails to file a return or pay any
27 assessment within the time required by the commission shall pay
28 to the commission a penalty of 10 percent of the amount of the
29 assessment determined to be due, and, in addition, shall pay 1.5
30 percent interest per month on the unpaid balance.

31 79510. In addition to any other penalty imposed, the
32 commission may require any person who fails to pay an assessment
33 or related charge pursuant to this article to furnish and maintain a
34 surety bond in a form and amount, and for a period of time,
35 specified by the commission as assurance that all payments to the
36 commission will be made when due.

Article 7. Violations

79511. All violations of this chapter shall be prosecuted in accordance with the provisions of this article and, as appropriate, Sections 79509 and 79510.

79512. ~~It is a civil violation for any person to do~~ *A civil penalty not exceeding one thousand dollars (\$1,000) may be levied by the commission upon a person who does any of the following:*

(a) ~~Willfully render or furnish~~ *renders or furnishes* a false report, statement, or record required by the commission.

(b) ~~Fail~~ *Fails* to render or furnish a report, statement, or record required by the commission.

(c) ~~Secrete, destroy, or alter~~ *Secretes, destroys, or alters* records required to be kept under this chapter.

79513. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79514. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for the obtaining of injunctive relief or specific performance regarding this chapter and the regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil

1 Procedure, except that the showing of irreparable harm or
2 inadequate remedy at law specified in Sections 526 and 527 of the
3 Code of Civil Procedure is not required.

4 (c) Upon entry of any final judgment on behalf of the
5 commission against any defendant, the court shall enjoin the
6 defendant from conducting any type of business regarding nursery
7 products until there is full compliance and satisfaction of the
8 judgment. Upon a favorable judgment for the commission, it shall
9 be entitled to receive reimbursement for any reasonable attorney's
10 fees and other actual related costs. Venue for these actions may
11 be established at the domicile or place of business of the defendant
12 or in the county of the principal office of the commission. The
13 commission may be sued only in the county of its principal office.

14 79515. Any action by the commission for any violation of this
15 chapter shall be commenced within two years from the date of
16 discovery of the alleged violation. Any action against the
17 commission by any person shall be commenced within two years
18 from the date of the act of which the person complains.

19 79516. The termination of this chapter shall not affect or waive
20 any right, duty, obligation, or liability that has arisen or that may
21 thereafter arise in connection with this chapter, release or
22 extinguish any violation of this chapter, or affect or impair any
23 right or remedies of the commission with respect to any violation.

24 25 Article 8. Continuation or Suspension and Termination

26
27 79521. Every five years after the implementation of this
28 chapter, the secretary shall hold a hearing to determine whether
29 the operation of this chapter should be continued. If the secretary
30 finds after the hearing that a substantial question exists among
31 eligible producers regarding whether the operation of this chapter
32 should be continued, the secretary shall submit the chapter to a
33 reapproval referendum. If a reapproval referendum is required, the
34 operation of this chapter shall be continued in effect if the secretary
35 finds that a majority of the eligible producers voting in the
36 referendum, voted in favor of continuing this chapter. No bond or
37 security shall be required for a referendum pursuant to this section.

38 79522. If the secretary finds after conducting a hearing that no
39 substantial question exists, or after a referendum that a favorable
40 vote has been given, the secretary shall so certify and this chapter

1 shall remain operative. If the secretary finds that a favorable vote
2 has not been given after a referendum, he or she shall so certify
3 and declare the operation of this chapter and the commission
4 suspended upon the expiration of the then current marketing season.
5 Thereupon, the operations of the commission shall be concluded
6 and funds distributed in the manner provided in this article.

7 79523. (a) Upon a finding by a two-thirds vote of the
8 commission that the operation of this chapter has not tended to
9 effectuate its declared purposes, the commission may recommend
10 to the secretary that the operation of this chapter be suspended.
11 However, any suspension shall not become effective until the
12 expiration of the then current marketing season.

13 (b) The secretary shall, upon receipt of the recommendation, or
14 may, after a public hearing to review a petition filed with him or
15 her requesting a suspension signed by 20 percent of the producers
16 by number who produced and sold not less than 20 percent of the
17 total value of nursery products in the immediately preceding
18 marketing season, hold a referendum among producers to determine
19 if the operations of the commission shall be suspended. However,
20 the secretary shall not hold a referendum as a result of the petition
21 unless the petitioner shows by a preponderance of the evidence
22 that this chapter has not tended to effectuate its declared purposes.

23 (c) The secretary shall establish a referendum period, which
24 shall not be less than 10 days or more than 60 days in duration.
25 The secretary may prescribe additional procedures as may be
26 necessary to conduct the referendum. At the close of the established
27 referendum period, the secretary shall tabulate the ballots filed
28 during the period. If at least 40 percent of the total number of
29 producers from the list established by the secretary participate in
30 the referendum, the secretary shall suspend the operation of this
31 chapter if he or she finds either one of the following has occurred:

32 (1) Sixty-five percent or more of the producers who voted in
33 the referendum voted in favor of suspension, and the producers so
34 voting sold a majority of the total value of nursery products in the
35 preceding marketing season by all of the producers who voted in
36 the referendum.

37 (2) A majority of the producers who voted in the referendum
38 voted in favor of suspension, and the producers so voting sold 65
39 percent or more of the total value of nursery products in the

1 preceding marketing season by all of the producers who voted in
2 the referendum.

3 79524. After the effective date of suspension of this chapter,
4 the operation of the commission shall be concluded and all moneys
5 held by the commission not required to defray the expenses of
6 concluding and terminating operations of the commission shall be
7 returned on a pro rata basis to all persons from whom assessments
8 were collected in the immediately preceding marketing season.
9 However, if the commission finds that the amounts returnable are
10 so small as to make impractical the computation and remitting of
11 the prorate refund to these persons, any funds remaining after
12 payment of all expenses of winding up and terminating operations
13 shall be withdrawn from the approved depository and paid into an
14 appropriate state or federal program conducting or funding
15 activities related to the subject matter of this chapter, or to a private
16 nonprofit organization which has received tax exempt status under
17 Section 501(c)(3) of the Internal Revenue Code and which benefits
18 the California nursery industry.

19 79525. Upon suspension of the operation of this chapter, the
20 commission shall mail a copy of the notice of suspension to all
21 eligible producers affected by the suspension whose names and
22 addresses are on file.

23 SEC. 2. The Legislature finds and declares that Section 1 of
24 this act, which adds Section 79505 to the Food and Agricultural
25 Code, imposes a limitation on the public's right of access to the
26 meetings of public bodies or the writings of public officials and
27 agencies within the meaning of Section 3 of Article I of the
28 California Constitution. Pursuant to that constitutional provision,
29 the Legislature makes the following findings to demonstrate the
30 interest protected by this limitation and the need for protecting
31 that interest:

32 In order to allow the California Nursery Producers Commission
33 to fully accomplish its goals, it is imperative to protect the interests
34 of those persons submitting information to the commission to
35 ensure that any personal or sensitive business information that this
36 act requires those persons to submit is protected as confidential
37 information.